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- **Save Passamaquoddy Bay-U.S. (“SPB-US”) and *Nulankeyutomonen Nkihtahkomikumon* (We Take Care of Our Land) (“NN”).**

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April 1, 2010

Via E-mail and First Class Mail

Susan M. Lessard, Chair
c/o Terry Hanson
Board of Environmental Protection
#17 State House Station
Augusta, Maine, 04333-0017

Re: Petition for Leave to Intervene in Calais LNG by Save Passamaquoddy Bay-US and
Nulankeyutomonen Nkihtabkomikumon (We Take Care of Our Land)

Dear Chair Lessard:

Enclosed for filing is the Petition for Leave to Intervene by Save Passamaquoddy Bay-US and *Nulankeyutomonen Nkihtabkomikumon* (We Take Care of Our Land) in the pending Calais LNG matters. Per the Board's March, 2010 Order, an electronic copy is being filed today. The original and 15 hard copies will follow by first-class mail.

Thank you.

Sincerely,



Ronald A. Shems
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For the firm
SHEMS DUNKIEL RAUBVOGEL & SAUNDERS PLLC

Attorneys for Petitioners

cc: David van Slyke (via e-mail and first class mail)
Becky Blais (via e-mail)
Sean Mahoney (via e-mail)

Enclosure

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

Re: Calais LNG) Air Emission (# A-1029-71-A-N),
) Site Location of Development (# L-24843-26-A-N),
) Natural Resources Protection Act (# L-24843-TG-B-N,
) #L- 24843-IWC-N, #L24843-L6-D-N, and #L-24843-4P-E-N),
) and Waste Discharge (#W-9056-5O-AN).

PETITION FOR LEAVE TO INTERVENE OF
SAVE PASSAMAQUODDY BAY-U.S.
AND
NULANKEYUTOMONEN NKIHTAHKOMIKUMON
(WE TAKE CARE OF OUR LAND)

I. INTRODUCTION.

Pursuant to 5 M.R.S.A. § 9054(1) and CMR 30(5)(A) and other applicable rules, Save Passamaquoddy Bay-U.S. ("SPB-US"), and *Nulankeyutomonen Nkihtahkomikumon* (We Take Care of Our Land) ("NN") (together, "Petitioners") respectfully request that the Board of Environmental Protection allow their intervention in this matter.

SPB-US and NN are Maine not-for-profit corporations. SPB-US and NN were formed, in part, for the specific purpose of opposing construction of the LNG facilities on Passamaquoddy Bay and to represent their members and their members' interests as they would be affected by proposed LNG facilities. SPB-US's members are individuals residing on or by, who regularly use and enjoy, Passamaquoddy Bay and the St. Croix River. Its members would be directly and substantially affected by the Calais LNG proposal, and hence this proceeding. NN's members are members of the Passamaquoddy Tribe who likewise reside on or by, and regularly use and enjoy, Passamaquoddy Bay and the St. Croix River. Likewise, NN's members would be directly and substantially affected by the Calais LNG proposal, and hence this proceeding.

The Board of Environmental Protection assumed jurisdiction over this matter on March 18, 2010. The BEP set a deadline of April 1, 2010 for motions to intervene. This motion is timely.

This motion fulfills the requirements for petitions for leave to intervene. CMR 30(5). As discussed below, Save Passamaquoddy Bay-U.S.'s and NN's members have direct and substantial interests that may be affected by this proceeding; they have reasonably specific contentions regarding the subject matter of the hearing and the appropriate statutory criteria; and they are prepared and capable of supporting their contentions through participation in the hearing. CMR 30(5)(A)(1)(a)-(c).

II. PETITIONERS AND THEIR MEMBERS HAVE DIRECT AND SUBSTANTIAL INTERESTS AFFECTED BY THIS PROCEEDING.

The proposed Calais LNG facilities would fundamentally and permanently transform and industrialize Passamaquoddy Bay, one of the last relatively unspoiled and undeveloped areas of the Maine Coast. Petitioners make regular use of the Bay, its fisheries, habitat, biota, and aesthetic character. The safety and security zones around LNG tankers would restrict, if not severely limit or eliminate, their use and enjoyment of the Bay and the River. These restrictions would be even more severe if the proposed Downeast LNG facility is permitted and additional tankers transit through the Bay. SPB-US's and NN's members include boaters and commercial, recreational, or subsistence fishers. Petitioners stand to lose or have substantially harmed the beauty of the natural and scenic area, their recreational, commercial, habitat, navigational and existing uses of the area, and their way of life. The Petitioners' interests are protected by state and federal law (implemented by the State of Maine) including the Site Location of Development Act, the Natural Resources Protection Act, and the Clean Water Act, Coastal Zone

Management Act, Air Emission laws, and the other laws at issue in this matter.

Petitioners' direct and substantial interests are not limited by the examples given below.

Examples of some of Petitioners' (and Petitioners' members') direct and substantial interests follow:

A. SPB-US MEMBER INTERESTS.

Katherine and Richard Berry are members of Save Passamaquoddy Bay-U.S.

Their direct and substantial interests would be affected because, for example, boating is their favorite form of recreation and they regularly entertain family and friends on their 22-foot Sea Ray motor boat. They have invested heavily in their boat, piloting courses, and other boat-related activities and equipment. They regularly go to the southern part of Passamaquoddy Bay and through Head Harbor Passage to enjoy viewing whales and other marine life. The safety and security zones and tanker traffic associated with the proposed Calais LNG facility would greatly restrict their ability to boat in these areas.

SPB-US members Jeffrey and Kay Wright reside and own rental properties for tourists within a mile of the proposed Calais LNG site. Tourists, usually drawn by the area's unspoiled natural areas, plentiful flora and fauna, rugged seashore, beachcombing, and wildlife observation will instead be deterred by the heavy and dangerous industrialization associated with Calais LNG. Mr. Wright is also a Registered Maine Master Guide and conducts eco- and wildlife-viewing tours up the St. Croix River. His business would also be severely negatively impacted by Calais LNG. The Wrights report that their insurance expenses will increase due to Calais LNG. They might also suffer the impacts of light and noise pollution from Calais LNG, spoiling the night sky and

tranquility that they cherish and rely on for personal and business purposes. They have a direct and substantial interest in this matter.

SPB-US member Melodie Greene lives within five miles of the proposed Calais LNG site. She boats and hikes close to the proposed facility. She also boats where tankers would transit. The proposed Calais LNG facility and tankers that would serve it would ruin the areas where she presently recreates and would like to continue recreating. She might also suffer impacts of noise and light pollution. She and other SPB-US members are concerned about Calais LNG's impact on the Devil's Head Conservation Area that they regularly visit and enjoy and would like to continue enjoying.

SPB-US members Linda and Robert Godfrey's direct and substantial interests in this matter include the proposed project's adverse effect on the environmental significance of the area, its fragile eco-system, the distinctive natural beauty of the area and the commercial viability of their businesses. The Godfreys have lived on Passamaquoddy Bay for twenty years and are part of three businesses that are located at the edge of the Bay. Their home and businesses, along with all of downtown Eastport, and much of the residential neighborhoods in Eastport would fall into the federally designated Hazard Zones, meaning that the quality of life they now enjoy and count on for business success would be intruded upon by possible homeland security requirements such as search lights, siren systems, helicopter escorts, gun boat escorts, security divers and community shelters. The Godfreys have a direct and substantial interest in the disruptions that would be caused by the presence of LNG industrial operations, security issues, and scheduling and access to locations such as St. Croix Island and natural areas along the shore.

Linda Godfrey is owner of The Atlantic Leadership Center, which hosts Elderhostel programs as one of its offerings, and has done so for 16 years. This international program annually attracts a couple hundred participants to the area, with Linda's programs being housed at The Roosevelt International Park on Campobello Island. The week-long programs are titled Bay of Fundy – Lighthouses, Whales and Natural Wonders; Life at the Glorious; and Franklin and Eleanor – Island Influences and Inspirations. Each of these programs uses Passamaquoddy Bay for sailing, whale watching and shoreline programs. These programs make use of what would be tanker safety and security zones, and would be disrupted by tanker transits. Linda is also part owner of The Commons – Eastport, and 15 Sea Street, presently under development as a residential conference and hotel. Both are located on the Bay. The Commons represents the art work of 94 artisans who are connected to Passamaquoddy Bay and whose original art reflects the natural beauty and serenity of the area. The Commons also houses two luxury suites for weekly rentals and its success depends on users experiencing the beauty of the unique eco-system found along the Bay. These types of businesses are incompatible with being located in the government's designated Hazard Zone.

Bob Godfrey owns and operates The Quoddy Loop Tour Guide website, a virtual guide service that offers online information about the attributes and offerings in the Passamaquoddy Bay area. He also operates Old Sow Publishing and The Old Sow Whirlpool website, which provide information about Old Sow, the largest whirlpool in the western hemisphere. Old Sow was recently featured on the History Channel's "Underwater Universe: The Seven Deadly Seas." Bob Godfrey appeared on the segment

about Old Sow and commented on the site dynamics and the dangers it presents to sailing vessels. The transit route of proposed LNG tankers enters these dangerous waters, and also requires tankers and their multiple tug escorts to make a hairpin turn at Eastport's eastern shoreline where the Godfreys reside and work. Bob Godfrey has a direct and substantial interest in the negative effect this may have on the traveling public, which is looking for an aesthetically beautiful and safe place in which to vacation and recreate. He also has a direct and substantial personal interest in preserving the Bay's current status and healthy development. The Godfreys would lose their routine enjoyment of: scenery and wildlife while boating in the high quality waters and habitat and while hiking, viewing aurora borealis and the natural night sky, and the area's quiet. Their direct businesses and personal interests would suffer substantially as a result of the proposed project, not only because access to the Bay would be restricted by tanker transits, but because people would no longer be drawn to the area for its natural beauty. The proposed Calais LNG facility is in conflict with the lifestyle and livelihoods of the Godfreys – their direct and substantial interests.

SPB-US member Margaret McGarvey is a partner in both The Commons and 15 Sea Street, and has the same concerns about threats to these businesses as Linda Godfrey has noted above. In addition, Ms. McGarvey's home is located at the site at which LNG operators indicate they would anchor during inclement weather. Such anchorage and associated, intrusive security would have a direct and substantial impact on Ms. McGarvey's enjoyment of her home. She also has a direct and substantial interest in the continued viability of her rental facility next to her home and whether summer renters would continue to make use of the rental facility. In short, her business and personal

direct and substantial interests depend on the Bay and River's scenic, rural, and wilderness attributes—which would be destroyed by Calais LNG facilities and tanker transits.

SPB-US members Dr. Suzanne Haines Crawford and Dr. Paul Crawford chose to live in the area, where Paul's family has lived for generations, because of the natural beauty of the area and its quality of life. They live on the St. Croix River where the tankers would transit to the proposed Calais LNG facility. Paul is a retired Professor of Cartography and Geography and he has a substantial interest in the fragility of the geography in the area, the impact of proposed industrialization of the waterway, and the possibility of known seismic activity in the area. As a Cartographer, he is well aware of the proposed transit route and its intrusion into Canadian waters.

Paul Crawford is a member of The Nature Conservancy, the National Resource Council of Maine, the Environmental Defense Fund, and Conservation Law Foundation following a lifelong commitment and concern for both flora and fauna—all of which are a concern within Passamaquoddy Bay and the wildlife areas that surround it. The Crawfords have a direct and substantial interest in erosion threats to historically significant St. Croix Island, public use disruption and degradation of Devil's Head Conservation Area and the Mill Cove – Pulpit Rock area, and negative effects of noise, light, air and water pollution from the proposed project and tanker/tug boat movements through all three of these important locations. The Crawfords frequent these areas and wish to continue doing so. These impacts would directly and adversely affect the Crawford's substantial interests in the Bay and River's environmental attributes and their lifestyles. Suzanne Crawford's expertise is in Canadian-American studies, and she was

part of the international leadership team in 2004 for the 400th Year Commemoration of St. Croix Island. She is well aware of the fragile nature of this prominent historic area and its importance in the history and cultural life of the United States. She has a direct and substantial interest in assuring that their home (along the proposed tanker transit route) and the areas they frequent are free of homeland security requirements, including search lights, siren systems, helicopter escorts, gun boat escorts, security divers and community shelters.

SPB-US member Gary Guisinger uses the Passamaquoddy Bay area extensively for both professional and recreational purposes. He and his family frequently sail and kayak in the Bay. Gary also staffs the Elderhostel program, described above, which uses the Bay and River for Active Outdoor Programs offered to people from throughout the United States who attend the week-long programs because of the eco-tourism attraction. Each summer, a couple hundred visitors enroll in these local programs and take courses in kayaking, sailing, hiking, whale watching and cultural experiences within the area. Gary is part of the instructional classes in kayaking and sailing. The groups use the bay, Moosehorn National Wildlife Area, Devil's Head Conservation Area and St. Croix Island for their programs. Because of both these professional and recreational uses, he is well informed about the unusual natural beauty of the area, as well as the challenging high tides and heavy currents, fog, and wind challenges on the water. The Calais LNG tanker traffic and resulting creation of federally designated safety and security zones would impair his ability to conduct these activities according to their own and their clients' schedules. The proposed terminal operations and tanker transits would significantly disrupt these activities and his direct and substantial interests described above.

B. NN'S DIRECT AND SUBSTANTIAL INTERESTS.

NN's members view the proposed Calais LNG facility as an invasion of Passamaquoddy territory and destructive to Passamaquoddy culture, central to which is the Bay itself. They refer to the Bay as the "heartland" or "spiritual center." The industrialization and the tankers would harm Petitioners' strong personal, cultural, spiritual, and professional relationships with the waters and the creatures that live there. Petitioners make regular use of the Bay, its fisheries, habitat, biota, and aesthetic character. Ships approaching the Calais LNG terminal would pass through Petitioners' traditional waters and cause harm to aquatic species, including the endangered Right Whale and the threatened harbor porpoise. The Right Whale is sacred to Petitioners, and the harbor porpoise is integral to Petitioners' way of life. The large tankers, safety and security zones, and homeland security measures – militarization of the Bay – would severely limit Petitioners' navigation and free use of the waters. This would infringe on Petitioners' traditional rights to fish and travel freely throughout the Bay. The facilities would diminish Petitioners' uses, experiences, and appreciation of the area, and Petitioners' way of life would also be disturbed by the industrial noises that would carry over the water.

The following examples of individual Petitioners' (and Petitioner's members') demonstrate ways in which individual Petitioners, as individuals and as members of *Nulankeyutomonen Nkihtahkomikumon*, have direct and substantial interests that may be affected by the proceedings.

NN member Chief Hugh M. Akagi's appreciation of the highly scenic beauty of the proposed Calais LNG site and tanker transit routes, which he views by car and boat, would be destroyed as a result of the project. He resides on the Bay in St. Andrews and is very connected to the Maine and New Brunswick sides of the Bay, River, their environs and inhabitants. He is very concerned about the project's impacts on the Right Whale and the harbor porpoise. Ships approaching the proposed terminal would pass through traditional waters and through the ring of islands protecting the Bay. The potential harm to all things within traditional territory (including the Maine side) is a risk he cannot afford to take. The Bay and River have suffered enough from the arrival of the other cultures' industries. Depletion of cod, haddock, and flounder should be a warning. The harbor porpoise (integral to his and his Nation's way of life on the Bay) is a "threatened" species. The Right Whale, worshipped by the Passamaquoddy (including Chief Akagi), is now an "endangered" species. He believes that this industry at the proposed Calais LNG site and the tanker transits would put these whales at further risk and now put the Passamaquoddy People themselves at risk. Chief Akagi has a further direct and substantial interest in this matter because the Calais LNG facility will be located directly across from a mining operation at the Bayside Port, in Canada. To add another wharf and considerably more shipping traffic to this narrow portion of the River will turn a relatively peaceful atmosphere into an industrial nightmare for him and all the creatures he was born to protect. The loss of the beauty, the peace and quiet would be a direct assault on his Native world which retreats into these surroundings whenever the need arises. As an active member of a local ACAP (Atlantic Coastal Action Plan) board and SCEP (Saint Croix Estuary Project), representing his culture and science, he

supported the creation of a nature park at Todd's Point, in the area proposed for the Calais LNG facility. The Park has already witnessed the devastation of coastline by the mining industry. He feels that to compound this with a massive LNG facility and (to repeat) increased shipping traffic from the largest ships in the world, escort tugboats, and all the noise, lights and guns would mean the main attraction for visitors, the "Nature Park," will become an "Industrial Park"! Chief Akagi enjoys and benefits from the scenic and other attributes of the Maine side of this area on a regular basis and plans to continue to do so, and has a substantial interest in not industrializing it as proposed by Calais LNG.

Another of Chief Akagi's direct and substantial interests is that the exclusion zones of the Calais LNG facility and tanker transits to either facility would prevent him from enjoying the waters the Tribe has occupied since time immemorial and that he has regularly used throughout his lifetime and will continue using on a regular basis. He and his friends and family who have boats go on frequent trips into the waters. They go out to see whales, to fish, to experience the view (including the view on the Maine side), and to live fully on all Tribal lands. The denial of access to these waters (in either Maine or New Brunswick) is an infringement on his rights as a Native citizen in his own territory. Chief Akagi has a 20-foot fishing boat to exercise his rights to fish and travel freely throughout the Bay, even more frequently in his retirement, only to find there would be limitations imposed by large ships, safety and security zones, and other homeland security measures with the arrival of LNG in their waters. His free usage of the waters is incongruent with the schedule of tankers going through. He is the last person who would like to encounter armed personnel on these waters. He has a further direct and substantial

interest in the effects of a LNG facility on sacred waters and their inhabitants. Whales and porpoises are culturally very important to him and he obtains great personal benefit from viewing them. He views them regularly and intends to continue to do so from land and from his boat in both US and Canadian waters. Whales and porpoises will also find limited access through these waters because they communicate and seek food by sonar. Heavy industry and massive ships pollute the waters with sound waves that are confusing and/or frightening to creatures not used to interference on such a grand scale. This would change the breeding and migratory patterns of creatures already on the brink of extinction. Chief Akagi cannot accept their forced departure from the Bay and River so long as he has a voice to use on their behalf. He would be disturbed by the noise pollution that would carry over the waters which, in addition to the above, would harm his substantial interest in the Bay and River and surrounding environment.

NN member Vera J. Francis is has a direct and substantial interest in this matter because the proposed Calais LNG project would place her spiritual and cultural relationship to the porpoise, the "little whale," in jeopardy. She is concerned about the impacts of an LNG release on the porpoise. A release would kill a surfacing porpoise. Her enjoyment of kayaking in the area (in Maine waters) would be limited and diminished by tanker transits that would disrupt her views and her very ability to get out on the water while tankers would pass by. She feels that the way of life of the Passamaquoddy appears to have been deemed expendable.

NN Member Mary Bassett lives by the shore in Sipayik (Pleasant Point Reservation). She has a direct and substantial interest in the area's potential loss of peace and tranquility, and the militarization of the Bay that would result from tankers traveling

to the proposed Calais LNG facility through waters that are her backyard. She is also fearful of the damage the tankers will pose to the endangered Right Whale, whose summer nursing habitat is in Head Harbor. Whales are sacred to her—a whale was the grandmother of her people's Cultural Hero, Koluskap. Harm to the whales would directly harm her culture. She is concerned that an LNG release would kill whales and porpoises. LNG tankers would obstruct the view of the Bay and River's colors, tides, and many moods, which sustain her. Her son has a boat in Eastport and she regularly boats with him on waters that would be used as the tanker route. She observes wildlife including whales and porpoises from her son's boat. The Calais LNG proposal would interfere with this direct and substantial interest in her beliefs, lifestyle, boating, and viewing of wildlife.

NN member David Moses Bridges resides in Sipayik and regularly uses the Bay and St. Croix River for boating and to enjoy wildlife. Mr. Bridges works as a boat builder and traditional canoe maker. Mr. Bridges takes his canoe out onto the Bay at slack high tide – the same time that the tankers would have to transit. The Calais LNG proposal would interfere with his traditional boating. Mr. Bridges is strongly connected to the Bay and St. Croix River, wildlife, and natural beauty of the area, and is gravely concerned with the limitations the facilities, tankers, and exclusion zones would place on his rights to freely access the Bay and River. He also shares the above-mentioned interests in whales and porpoises.

NN member Hilda Lewis is a tribal elder and resides by the Bay in Sipayik. She likewise enjoys and boats on the Bay and treasures its wildlife, particularly whales and

porpoises. As with the other NN members described above, she has a substantial interest that would be affected by the tankers serving the proposed Calais LNG facility.

In sum, this proceeding will undoubtedly affect Petitioners' direct and substantial interests, and participation in this proceeding could eliminate or mitigate any impact on these interests.

III. REASONABLY SPECIFIC CONTENTIONS.

Petitioners have reasonably specific contentions regarding the subject matter of the hearing and the appropriate statutory criteria. Rule 5(A)(1)(b). The legal bases for intervention include Petitioners' belief that the project would violate the Site Location of Development Law, the Natural Resources Protection Act, Maine Water Quality Standards and the Federal Clean Water Act, the Coastal Zone Management Act, Air Emission laws, and other applicable federal and state laws. Petitioners' contentions include, but are not limited to, that the proposal: cannot meet the safety requirements of the Site Location of Development Law, see, e.g., 38 M.R.S.A. §§ 481; 487-A; would adversely affect the natural environment and existing uses, scenic character, water quality or other natural resources in the area pursuant to that same law, *id.* § 484(3) & DEP Rules, Chapter 375; would unreasonably interfere with existing scenic, aesthetic, recreational, and navigational uses according to the Natural Resources Protection Act, 38 M.R.S.A. § 480-D(1) & DEP Rules, Chapter 315; would unreasonably harm significant habitat and fisheries; 38 M.R.S.A. § 480-D(3) & DEP Rules, Chapter 335; and would violate state Water Quality Standards including existing uses, habitat, recreation, shellfish harvesting, fishery uses, and antidegradation. 38 M.R.S.A. §§ 464, 465-B; 480-D(5). The proposed project will also violate the federal Clean Water Act as implemented by the State of

Maine. 33 U.S.C.A. § 1341; 1341(d). In short, the Calais LNG facilities cannot meet Maine and federal law requirements.

IV. PETITIONERS ARE PREPARED AND CAPABLE OF PARTICIPATION.

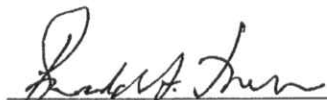
Petitioners are prepared and capable of participation in the hearing in order to support their contentions. Rule 5(A)(1)(c). They have been participating in the federal process before the Federal Energy Regulatory Commission and have secured qualified counsel in order to proceed before the Board of Environmental Protection. Petitioners are able to provide witnesses (including experts) regarding the above contentions. Petitioners have already demonstrated their preparedness and ability to participate in the Downeast LNG matter. They have also been active and capably participating in the Quoddy Bay, LLC LNG matter. Petitioners continue to be capable of participation in this matter.

WHEREFORE, Petitioners respectfully request that this Petition for Leave to Intervene be granted.

April 1, 2010

Save Passamaquoddy Bay-U.S.
Nulankeyutomonen Nkihtahkomikumon

by:



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